

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAPHNE RICHARD, ET AL.,

Plaintiff,

v.

GLENS FALLS NATIONAL BANK,

Defendants.

Civil Case No. 1:20-CV-00734-BKS-

**REQUEST FOR JUDICIAL NOTICE IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

Return Date: November 5, 2020

**TO THE HONORABLE JUDGE BRENDA K. SANNE, DEFENDANT AND ITS
ATTORNEYS**

Plaintiff Daphne Richard requests that this Court take judicial notice of certain facts pursuant to Federal Rules of Evidence section 201(b)(2), which provides that “[t]he court may judicially notice a fact that is not subject to reasonable dispute because it … (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” As such, the court may take judicial notice of matters of public record whose accuracy cannot reasonably be questioned. *See also, Kavowras v. New York Times Co.*, 328 F.3d 50, 57 (2d Cir. 2003) (“Judicial notice may be taken of public filings....”); *Jacques v. United States R. Retirement Bd.*, 736 F.2d 34, 40 (2d Cir. 1984). Furthermore, the court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). Accordingly, the following attached exhibits are capable of accurate and ready determination from sources whose accuracy cannot reasonably be questioned pursuant to Federal Rule of Evidence 201(b)(2), as they are a matter of public record. As such, Plaintiff requests that the court take judicial notice of the following facts and attached documents:

1. **Fact:** The NACHA, previously the National Automated Clearing House Association, is an association of financial institutions who use the Automated Clearing House (“ACH”) network. NACHA promulgates rules for use of the ACH that participating financial institutions agree to follow. *Volden v. Innovative Financial Systems, Inc.*, 440 F.3d 947, 949 (8th Cir. 2006). See also <https://www.nacha.org/ach-network>.

2. **Exhibit 1:** A true and correct copy of 2019 NACHA Operating Rules, Subsection 2.12.4.2 Formatting Requirements for Reinitiated Entries, with Subsection 2.12.4.2 highlighted for the Court’s convenience. The original NACHA Operating Rules may be obtained through the

website <https://www.nachaoperatingrulesonline.org> with a subscription. A copy of Subsection 2.12.4.2 was filed on August 12, 2019 as Exhibit 4 to Defendant Ally Bank's Motion to Dismiss Plaintiff's Complaint in *Coleman V. Ally Bank*, Case No. 2:19cv406, U.S. District Court for the District of Utah (Dkt. No. 23-4).

3. **Exhibit 2:** A true and correct copy of the JP Morgan Chase disclosure entitled "A Guide to Your Account" and filed on December 9, 2019 as Exhibit 1 to Plaintiff's Opposition to Motion to Dismiss in *Roy v. ESL Federal Credit Union*, Case No. 6:19-cv-06122, U.S. District Court for the Western District of New York (Dkt. No. 36-1).

4. **Exhibit 3:** A true and correct copy of *Hernandez v. Point Loma Credit Union*, No. 37 2013 00053519-CU-BT-CTL (San Diego County Superior Court, June 24, 2016).

5. **Exhibit 4:** A true and correct copy of, *Story v. SEFCU*, No. 1:18-cv-00764-MAD-DJS (N.D.N.Y. June 5, 2019) (Dkt. No. 34).

6. **Exhibit 5:** A true and correct copy of *In the Matter of Higher One, Inc.*, Consent Order, FDIC-1 1-700b, FDIC-1 1-704k (Federal Deposit Insurance Corporation, August 7, 2012), with relevant language highlighted in yellow for the Court's convenience.

7. **Exhibit 6:** A true and correct copy of the Joint Status Report filed in *Lambert v. Navy Federal Credit Union*, Case No. 19-1993 (4th Cir. Sept. 21, 2020) (Dkt. No. 38).

8. **Exhibit 7:** A true and correct copy of the Order approving final settlement in *Domann v. Summit Credit Union*, No. 3:18-CV-167-wmc (W.D. Wis. April 13, 2020) (Dkt. No. 78).

9. **Exhibit 8:** A true and correct copy of the First Amended Complaint in *Page v. Alliant*, No. 1:19-cv-05965 (N.D. Ill. September 24, 2020) (Dkt. No. 73).

10. **Exhibit 9:** A true and correct copy of *McNeil v. Capital One Bank, N.A.*, No. 9-cv-00473-FB-RER, Dkt. 48 (E.D.N.Y. Sept. 29, 2020).

11. **Exhibit 10:** A true and correct copy of *Roy v. ESL Federal Credit Union*, No. 19-CV-6122-FPG, Dkt. 57 (W.D.N.Y. Sept. 30, 2020).
12. **Exhibit 11:** A true and correct copy of Page 16 of Defendant's Deposit Account Rules and Regulations ("Account Agreement"), which Plaintiff's counsel downloaded from Defendant's website prior to filing this Action.
13. **Exhibit 12:** A true and correct copy of *Kelly v. Community Bank, N.A.*, No. 8:19-CV-919 (MAD/CFH) (N.D.N.Y. Feb. 18, 2020).
14. **Exhibit 13:** A true and correct copy of *Walker v. People's United Bank*, No. 3:17-cv-00304(AVC), Dkt. 48 (D. Conn. March 30, 2018).
15. **Exhibit 14:** A true and correct copy of *Brown v. Educators Credit Union*, No. 2019CV1814 (Racine Cty. Wis. Cir. Ct. July 1, 2020).
16. **Exhibit 15:** A true and correct copy of *Perri v. Notre Dame Federal Credit Union*, No. 71C01-1909-PL-000332 (Ind. Cir. Ct. St. Joseph Cty., March 2, 2020).
17. **Exhibit 16:** A true and correct copy of *Romohr v. The Tennessee Credit Union*, No. 19-1542-BC (Davidson Co. Tenn. Chancery Court May 19, 2020).
18. **Exhibit 17:** A true and correct copy of *Baptiste v. GTE Fed. Credit Union d/b/a GTE Fin.*, No. 20-CA-002928 (Hillsborough Co. Fla. Cir. Ct. July 8, 2020).
19. **Exhibit 18:** A true and correct copy of *Darty v. Scott Credit Union*, No. 19L0793 (St. Clair Cty. Ill. Cir. Ct. June 24, 2020).
20. **Exhibit 19:** A true and correct copy of the docket with Text Order in *Young v. The Wash. Trust Co.*, No. 1:10-cv-524-WES-PAS (D.R.I. June 2, 2020).
21. **Exhibit 20:** A true and correct copy of *Garcia v. UMB Bank NA*, No. 1916-CV01874 (Jackson Co. Mo. Circuit Court, Oct. 18, 2019).

22. **Exhibit 21:** A true and correct copy of a portion of the hearing transcript in *Tisdale v. Wilson Bank and Trust*, No. 19-400-BC (Davidson Co. Tenn. Chancery Court, Oct. 17, 2019).

23. **Exhibit 22:** A true and correct copy of *Tannehill v. Simmons Bank*, No. 3:19-cv-140-DPM (E.D. Ark., Oct. 21, 2019).

24. **Exhibit 23:** A true and correct copy of *Noe v. City Nat'l Bank of W. Va.*, No. 3:19-cv-0690 (S.D. W. Va., Feb. 19, 2020).

25. **Exhibit 24:** A true and correct copy of *Ingram v. Teachers Credit Union*, No. 49D01-1908-PL-O25431 (Ind. Super. Ct. Marion Cty., Feb. 18, 2020).

26. **Exhibit 25:** A true and correct copy of *Almon v. Independence Bank*, Case No. 19-CI-00817 (Ky. Cir. Ct., McCracken County Mar. 18, 2020).

27. **Exhibit 26:** A true and correct copy of *McMurrin v. America First Credit Union*, Case No: 190909065 CN (3rd District Court, Salt Lake County, Utah).

28. **Exhibit 27:** A true and correct copy of *Vocaty v. Great Lakes Credit Union*, No 19-L-727 (Lake Cty. Cir., Ill. June 3, 2020).

29. **Exhibit 28:** A true and correct copy of *Duncan v. BancFirst*, No. CJ-2020-348 (Dist. Okla. Cty. June 3, 2020).

Dated: October 19, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Taras Kick, hereby certify that on the 19th day of October, 2020, the foregoing document, filed through the CM/ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Taras Kick
Taras Kick